



MEETING DATE: 08-21-2006

AGENDA ITEM: 7

COUNCIL AGENDA REPORT

DATE: AUGUST 16, 2006

TO: MAYOR AND TOWN COUNCIL

FROM: ORRY P. KORB, TOWN ATTORNEY

SUBJECT: ADOPT RESOLUTION GRANTING IN PART AND DENYING IN PART A REQUEST TO MODIFY A CONDITIONAL USE PERMIT TO INCREASE THE SEATING, ALLOW SPECIAL EVENTS, AND ALLOW A WINE BAR WITH RETAIL SALE ON PROPERTY ZONED C-2. CONDITIONAL USE PERMIT U-06-20 APN 529-03-035 PROPERTY LOCATION: 42 ELM STREET PROPERTY OWNER: MICHAEL COBLER APPLICANT: BELGHIS AND FARHAD PROUSHANI.

RECOMMENDATION:

Adopt resolution per the Planning Commission's recommendation granting in part and denying in part a request to modify a conditional use permit to increase the seating, allow special events, and allow a wine bar with retail sale on property zoned C-2. The recommended resolution grants applicants' requests to allow special events and a wine bar with retail sale on property zoned C-2. However, the resolution denies applicants' request to increase seating in the absence of an appropriate application.

DISCUSSION:

On August 7, 2006, Council agreed with the Planning Commission's recommendation made on June 28, 2006 granting in part and denying in part a request to modify a conditional use permit to increase the seating, allow special events, and allow a wine bar with retail sale on property zoned C-2. The attached resolution finalizes that decision.

Attachment: Proposed Resolution

Distribution: Belghis and Farhad Proushani, 42 Elm St., Los Gatos, CA 95030
Michael Cobler, 900 E. Campbell Ave., Campbell, CA 95008

PREPARED BY: ORRY P. KORB, TOWN ATTORNEY

OPK:LMB/wp [N:\ATY\Report Cafe Rouge.wpd]

Reviewed by: PS Town Manager PS Assistant Town Manager _____ Clerk
Finance PS Community Development

Rev: 8/16/06 1:24 pm

Reformatted: 7/19/99

File# 301-05

RESOLUTION

RESOLUTION GRANTING IN PART AND DENYING IN PART A REQUEST TO MODIFY A CONDITIONAL USE PERMIT TO INCREASE THE SEATING, ALLOW SPECIAL EVENTS AND A WINE BAR WITH RETAIL SALE ON PROPERTY ZONED C-2.

**APN: 529-03-035
CONDITIONAL USE PERMIT U-06-20
PROPERTY LOCATION: 42 ELM STREET
PROPERTY OWNER/APPLICANT:
BELGHIS AND FARHAD PROUSHANI**

WHEREAS:

A. This matter came before the Town Council for public hearing on August 7, 2006, and was regularly noticed in conformance with State and Town law.

B. Council received testimony and documentary evidence from the applicant and all interested persons who wished to testify or submit documents. Council considered all testimony and materials submitted, including the record of the Planning Commission proceedings and the packet of material contained in the Council Agenda Report dated July 26, 2006, along with subsequent reports and materials prepared concerning this application.

C. The applicant is requesting to modify a conditional use permit to increase seating, allow special events, and allow a wine bar with retail sale on property zoned C-2.

D. The application was considered by the Planning Commission on June 28, 2006, which recommended the approval of wine tasting and retail sales of alcohol for off-site consumption. The recommended hours when these activities may occur are from 11:00 AM to 10:00 PM, seven days a week. All other requested uses, including the service of alcohol independent of meals and an increase in seating, were not recommended because they conflict with the Town's alcohol policy and current zoning regulations.

E. The Council agrees with the Planning Commission's recommendation to grant in part and deny in part applicant's request to modify a conditional use permit.

F. Council finds as follows:

1. The findings of the Planning Commission made on June 28, 2006 are adopted and incorporated herein.

2. The request to allow special events and a wine bar with retail sale promotes policies and strategies of the General Plan including: L.P.1.3 (encourage economic and social activity consistent with a small-scale, small town atmosphere and image); L.P.5.1 (maintain a variety of commercial uses to meet the shopping needs of residents and to preserve the small-town atmosphere); L.P.5.2 (emphasize retail uses in the Commercial Business District); L.P.5.5 (encourage the development and retention of locally-owned stores and shops); L.G.6.2 (preserve downtown Los Gatos as the historic center of the Town with goods and services for local residents while maintaining the existing Town identity, environment and commercial viability).

3. The request to increase seating conflicts with Town parking requirements and cannot be considered without an appropriate application.

RESOLVED:

1. The request to modify conditional use permit U-06-20 to allow special events and a wine bar with retail sale is granted. The conditions of approval are attached hereto as Exhibit "A" and by this reference incorporated herein.

2. The request to modify conditional use permit U-06-20 to increase seating is denied.

3. The decision constitutes a final administrative decision pursuant to Code of Civil Procedure section 1094.6 as adopted by section 1.10.085 of the Town Code of the Town of Los Gatos. Any application for judicial relief from this decision must be sought within the time limits and pursuant to the procedures established by Code of Civil Procedure section 1094.6, or such

shorter time as required by State and Federal Law.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California on the 21st day of August 2006, by the following vote.

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

Jackie Rose
DEPUTY CLERK
TOWN OF LOS GATOS, CALIFORNIA

CONDITIONS OF APPROVAL FOR:

42 Elm Street

Conditional Use Permit U-06-20

Requesting approval to modify a conditional use permit to increase the seating, allow special events,

and wine bar with retail wine sale on property zoned C-2. APN 529-03-035.

PROPERTY OWNER: Michael Cobler

APPLICANT: Belghis and Farhad Proushani

TO THE SATISFACTION OF THE COMMUNITY DEVELOPMENT DIRECTOR:

(Planning Section)

1. **CONDITIONS:** These conditions of approval shall supercede all previously adopted conditions.
2. **APPROVAL:** This application shall be completed in accordance with all of the conditions of approval listed below and in substantial compliance with the plans approved and noted as Exhibit I in the report to the Planning Commission. Any changes or modifications made to the approved plans shall be approved by the Director of Community Development or the Planning Commission, depending on the scope of the changes.
3. **LAPSE FOR DISCONTINUANCE:** If the activity for which the Conditional Use Permit has been granted is discontinued for a period of one (1) year the approval lapses.
4. **USE:** The approved use is a high turnover (sit-down) restaurant as defined by the Zoning Ordinance.
5. **NUMBER OF SEATS:** The maximum number of seats for the restaurant shall not exceed 12 seats total (indoor and outdoor).
6. **HOURS OF OPERATION:** Hours of operation for the restaurant shall be 6:00 a.m. to 1:00 a.m. seven days a week. Service of wine and the retail sale of wine shall be limited to 11:00 AM to 10:00 PM, seven days a week.
7. **WINE SALES:** The service of wine by the glass for the restaurant is permitted, indoors and outdoors, only with meals. A meal is defined as a combination of food items selected from a menu (breakfast, brunch, lunch, or dinner). Appetizers such as popcorn, nachos, pretzels, potato skins, relish trays, etc. (hot or cold) are not meals. Retail sale of wine for off-site consumption is permitted from 11:00 AM to 10:00 PM, seven days a week.
8. **WINE TASTING:** Wine tasting is permitted indoors only. The maximum sample size for the tasting shall not exceed one ounce.
9. **OUTDOOR AREA:** The design of improvements to the outdoor area must be approved by the Chief of Police, the Community Development Director, and Director of Public Works prior to installation. The Chief of Police will review the proposal for public safety. The Director of Public Works will review the proposal for landscaping, proper separation between landscaped areas, loading zone and pedestrian ramp.
10. **TAKE OUT:** Take out food shall be served in recycled material containers.
11. **UTENSILS:** All beverages and food served on site shall be served on reusable materials.
12. **TRASH:** Operators of the restaurant shall pick up trash in the vicinity of the restaurant when outdoor seating is available.
13. **SPECIAL EVENTS:** Wine tasting lectures, community meetings and private (invitation only) events are allowed. These events are limited to once a month and during hours of operation. Alcohol service and entertainment is not permitted during these events.

14. PROHIBITED USES: Service of alcohol without a meal and outdoor barbeques are not allowed.

TO THE SATISFACTION OF THE DIRECTOR OF PARKS AND PUBLIC WORKS:
(Engineering Division)

15. CONSTRUCTION STREET PARKING. No vehicle having a manufacturer's rated gross vehicle weight exceeding ten thousand (10,000) pounds shall be allowed to park on the portion of a street which abuts property in a residential zone without prior approval from the Town Engineer (§ 15.40.070).
16. RESTORATION OF PUBLIC IMPROVEMENTS. The developer shall repair or replace all existing improvements not designated for removal that are damaged or removed because of developer's operations. Improvements such as, but not limited to: curbs, gutters, sidewalks, driveways, signs, pavements, raised pavement markers, thermoplastic pavement markings, etc. shall be repaired and replaced to a condition equal to or better than the original condition. Existing improvement to be repaired or replaced shall be at the direction of the Engineering Construction Inspector, and shall comply with all Title 24 Disabled Access provisions. Developer shall request a walk-through with the Engineering Construction Inspector before the start of construction to verify existing conditions.
17. OUTDOOR TRASH ENCLOSURES. Within 60 days of issuance of a conditional use permit, outdoor trash enclosures shall be covered and area drains connected to the sanitary sewer system shall be provided within the enclosure.
18. GREASE TRAPS. Meet all requirement of the Santa Clara County Health Department and West Valley Sanitation District for the interception, separation or pretreatment of effluent.
19. CONSTRUCTION NOISE. Between the hours of 8:00 a.m. to 8:00 p.m., weekdays and 9:00 a.m. to 7:00 p.m. weekends and holidays, construction, alteration or repair activities shall be allowed. No individual piece of equipment shall produce a noise level exceeding eighty-five (85) dBA at twenty-five (25) feet. If the device is located within a structure on the property, the measurement shall be made at distances as close to twenty-five (25) feet from the device as possible. The noise level at any point outside of the property plane shall not exceed eighty-five (85) dBA.